

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1483

COMMONWEALTH

vs.

JULIO C. VITTINI.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant appeals from his conviction of two counts of distributing class B narcotics, in violation of G. L. c. 94C, § 32A (a). The defendant contends there was insufficient evidence to prove that he distributed or possessed narcotics. We affirm the convictions.

In reviewing sufficiency of the evidence, the "question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Commonwealth v. Latimore, 378 Mass. 671, 677 (1979), quoting Jackson v. Virginia, 443 U.S. 307, 318-319 (1979).

"'Circumstantial evidence is competent to establish guilt beyond a reasonable doubt,' and in a sufficiency inquiry, we consider both direct evidence and 'reasonable and possible' inferences

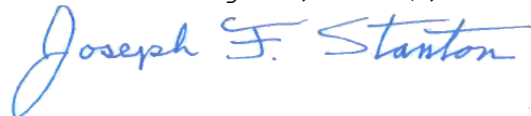
from that evidence, so long as they are 'not too remote in the ordinary course of events, or forbidden by any rule of law.'" Commonwealth v. Alvarado, 93 Mass. App. Ct. 469, 471 (2018), quoting Commonwealth v. Cotto, 69 Mass. App. Ct. 589, 591-592 (2007).

Here, the evidence was sufficient to allow a rational fact finder to infer that the defendant distributed narcotics. Officer Brennan conducted two controlled buys from Ms. Santiago, the defendant's middle person, at her apartment. During each controlled buy, Officer Brennan approached Santiago and asked to buy narcotics. Santiago then made a phone call to her dealer, whom she identified to Officer Brennan as "Julio." While making the phone call to her dealer, Santiago referred to the person on the other end as "Julio." After a short period of time, Santiago indicated that her dealer had arrived, went to the apartment door with Officer Brennan's money and conversed with an individual, and returned with narcotics. While Officer Brennan conducted the controlled buys inside Santiago's apartment, Officer Hanson surveilled the area outside the apartment and on each occasion he observed the defendant arrive, go inside for a few minutes, and then leave. Notably, the second buy was conducted with marked twenty dollar bills which were recovered from the defendant's left front pocket incident to his arrest immediately following the second controlled buy.

Although there was no direct evidence that the defendant possessed or distributed narcotics to Santiago, there was sufficient circumstantial evidence to allow a rational fact finder to infer that he did. Santiago referred to her dealer as "Julio" multiple times, the defendant visited the apartment building during both controlled buys and stayed there for only a brief period (after which Santiago and Brennan completed the transactions), Santiago met an individual at her apartment door only to return with narcotics in her hand, and the defendant had the five marked twenty dollar bills on his person when apprehended. In these circumstances, it is a "reasonable and possible" inference that the defendant distributed narcotics to Santiago. Alvarado, 93 Mass. App. Ct. at 471, quoting Cotto, 69 Mass. App. Ct. at 592.

Judgments affirmed.

By the Court (Green, C.J.,
Rubin & Agnes, JJ.¹),



Clerk

Entered: October 29, 2019.

¹ The panelists are listed in order of seniority.